IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAN HAVEL and DEAN RUCK, Plaintiffs,	§	
v.	§	
HONDA MOTOR COMPANY LTD., HONDA MOTOR EUROPE LTD., HONDA OF THE U.K. MANUFACTURING LIMITED, DENTSU McGARRY BOWEN LLC, DENTSU McGARRY BOWEN UK LTD, THE MILL (FACILITY) LIMITED, THE MILL GROUP, INC., ROGUE FILMS LTD., and DOES 1-3, Defendants.	§	Civil Action No. 4:13-CV-01291

DEFENDANTS' RULE 12(b)(2) MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION

TABLE OF CONTENTS

Page

TABLE OF CONTENTS ii

INDEX OF AUTHORITIES iv

I. Nature and Stage of the Proceedings 1

II. Issues to Be Ruled on and the Standard of Review 3

A. Issues to be ruled upon 3

B. Standard of review for determining personal jurisdiction 3

III. Summary of Argument 6

IV. Argument 7

A. The Plaintiff's Claims and the Facts 7

B. The Moving Defendants are Not Subject to Personal Jurisdiction In This Forum 10

1. The Honda Defendants 10

a. Honda Motor 10

b. Honda Europe 13

c. Honda UK Manufacturing 17

2. The McGarry Bowen Defendants 18

a. McGarry Bowen US 18

b. McGarry Bowen UK 19

3. The Mill Defendants. 22

a. The Mill US 22

b. The Mill UK 23

4. Rogue Films 24

V. Conclusion 24

CERTIFICATE OF SERVICE 25

INDEX OF AUTHORITIES

Cases **Page(s)**

Allred v. *Moore & Peterson*,
117 F.3d 278 (5th Cir. 1997) 6

Alpine View Co. Ltd. v. Atlas Copco AB,
205 F.3d 208 (5th Cir. 2000) 3

Barney F. Kogen & Co. v. Tred Avon Associates Ltd.,
393 F. Supp.2d 519 (S.D. Tex. 2005) 21, 24

Bearry v. Beech Aircraft Corp.,
818 F.2d 370 (5th Cir. 1987) 23

Black v. JP Morgan Chase & Co.,
2011 WL 4102802 (W.D. Pa. Aug. 10, 2011) 12

Burger King Corp. v. Rudzewicz,
471 U.S. 462 (1985) 4, 5, 6, 17

Dunn v. Svitzer,
885 F. Supp. 980 (S.D. Tex. 1995) 13, 19

Dymatize Enterprises v. Reflect Nutrition Ltd.,
2008 WL 161021 (N.D. Tex. 2008) 16

Facebook, Inc. v. Pedersen,
868 F. Supp.2d 953, 959 (N.D. Cal. 2012) 16

Facebook, Inc. v. Teachbook.com, LLC,
2011 WL 1672464 (N.D. Cal. 2011) 16

Fielding v. Hubert Burda Media, Inc.,
415 F.3d 419 (5th Cir. 2005) 3

Freudensprung v. Offshore Tech. Serv. Inc.,
379 F.3d 327 (5th Cir. 2004) 4

Gen. Motors Corp. v. Ignacio Lopez de Arriortua,
948 F. Supp. 656 (E.D. Mich. 1996) 12

Goodyear Dunlop Tires Operations, S.A. v. Brown,
– U.S. –, 131 S. Ct. 2846, 2853 (2011) 3, 4, 5, 14, 17, 19, 24

Guzman v. Memorial Hermann Hosp. Sys.,
No. H-07-3973, 2008 WL 5273713 (S.D. Tex. Dec. 17, 2008) 5, 23

Hargrave v. Fireboard Corp.,
710 F.2d 1154 (5th Cir. 1983) 11, 13

Helicopteros Nacionales de Columbia, S.A. v. Hall,
446 U.S. 408 (1984) 5, 13, 22, 23

Hooda v. WCA Services Corp.,
Civ. Action No. H-10-5022, 2011 WL 2182354 (S.D. Tex. June 3, 2011)............ 5, 14, 21

Hyperbaric Options, LLC v. Oxy-Health, LLC,
2013 WL 5449959 (E.D. Mich. 2013).. 27

International Shoe Co. v. Washington,
326 U.S. 310 (1945) 4, 5

In re Automobile Antitrust Cases I and II,
135 Cal. App.4th 100, 37 Cal. Rptr. 258 (Cal App. 2005)... 10

In re Chocolate Confectionary Antitrust Litigation,
602 F. Supp.2d 538 (M.D. Pa. 2009).. 12

In re Enter. Rent-A-Car Wage & Hour Employment Practices Litig.,
735 F. Supp.2d 277 (W.D. Pa. 2010) 12

Jobe v. ATR Marketing, Inc.,
87 F.3d 751 (5th Cir. 1999) 6

Johnston v. Multidata Systems Int'l Corp.,
523 F.3d 602 (5th Cir. 2008) 3, 19

LG Display Co. Ltd. v. Obayashi Seikou Co., Ltd.,
919 F. Supp.2d 17 (D.D.C. 2013).. 12

Martin v. Candle Queen Candles, LLC,
2012 WL 2952542 (W.D. Ky. 2012).. 16

McCarthy v. Honda Motor Co.,
No. 4:97-CV-689-A, 1997 WL 769474 (N.D. Tex. Dec. 4, 1997) 10, 11

Michiana Easy Livin' Country, Inc. v. Holten,
168 S.W.3d 777 (Tex. 2005) 5

Miller v. Honda Motor Co.,
779 F.2d 769 (1st Cir. 1985) 10, 11

Mink v. AAAA Development LLC,
190 F.3d 333 (5th Cir. 1999) 16

Nat'l Patent Dev. Corp. v. T.J. Smith & Nephew Ltd.,
877 F.2d 1003 (D.C. Cir. 1989) (en banc) 12

Panda Brandywine Corp. v. Potomac Elec. Power Co.,
253 F.3d 865 (5th Cir. 2001) 3, 15

Pervasive Software Inc. v. Lexware GmbH & Co. KG,
688 F.3d 214 (5th Cir. 2012) 15

Quick Techs., Inc. v. Sage Group PLC,
313 F.3d 338 (5th Cir.2002) 15, 16

Renoir v. Hantman's Associates, Inc.,
No. H-05-4152, 2006 WL 1007481 (S.D. Tex. April 18, 2006) 20, 21

Revell v. Lidov,
317 F.3d 467 (5th Cir. 2002) 14

Rittenhouse v. Mabry,
832 F.2d 1380 (5th Cir. 1987) 4

Seiferth v. Helicopteros Atuneros, Inc.,
47 F.3d 266 (5th Cir. 2006) 4

Seitz v. Envirotech Systems Worldwide Inc.,
513 F. Supp.2d 855, 864 (S.D. Tex. 2007) 15

Sher v. Johnson,
911 F.2d 1357 (9th Cir. 1990) 5

Singletary v. B.R.X., Inc.,
828 F.2d 1135 (5th Cir. 1987) 15

Stuart v. Spademan,
772 F.2d 1185 (5th Cir. 1985) 21, 24

Telcordia Technologies, Inc. v. Alcatel, S.A.,
2005 WL 1268061 (D. Del. 2005) 12

Williams v. Canon, Inc.,

432 F. Supp. 376 (C.D. Cal. 1977) 12

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAN HAVEL and DEAN RUCK, Plaintiffs, v. HONDA MOTOR COMPANY LTD., HONDA MOTOR EUROPE LTD., HONDA OF THE U.K. MANUFACTURING LIMITED, DENTSU McGARRY BOWEN LLC, DENTSU McGARRY BOWEN UK LTD, THE MILL (FACILITY) LIMITED, THE MILL GROUP, INC., ROGUE FILMS LTD., and DOES 1-3, Defendants.	§ § § § § § § § § § § § § § §	Civil Action No. 4:13-CV-01291

DEFENDANTS' RULE 12(b)(2) MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION

TO THE HONORABLE JUDGE LEE H. ROSENTHAL:

COMES NOW Defendants Honda Motor Co., Ltd., Honda Motor Europe, Ltd., Honda of the U.K. Manufacturing, Ltd., Dentsu McGarry Bowen, LLC, Dentsu McGarry Bowen UK Ltd., The Mill (Facility) Limited, The Mill Group, Inc. and Rogue Films Ltd. (collectively, "Defendants"), and file this motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2), and would respectfully show as follows:

I. Nature and Stage of the Proceedings.

The Plaintiffs are two Houston residents who allege they created a sculpture known as "Inversion." Amend. Comp. ¶ 3. Plaintiffs allege that Inversion was created in Houston in 2005 and published on May 1, 2005. *Id.* ¶ 16. Plaintiffs claim that Inversion was a sculpture made from the wooden boards of a house that were shaped into a conical structure leading from the front through to the back of the house. *Id.* ¶ 17. Inversion was a temporary creation that was destroyed in 2005 shortly after it was created. Plaintiffs allege they own the copyright in Inversion and "all derivative works pertaining thereto." *Id.* ¶ 18. Plaintiffs allege they applied for and received a certificate of copyright registration from the U.S. Copyright Office for Inversion on February 20, 2013, *id.* ¶ 16, eight years after it was torn down.

Plaintiffs allege that a European advertising campaign for the Honda CR-V compact sport utility vehicle infringed their copyright in Inversion. Amend. Comp. ¶¶ 28-33. Plaintiffs originally sued nine defendants, alleging claims of copyright infringement under United States and United Kingdom copyright law, plus pendant state law claims arising from the same facts. *See* Original Comp. ¶¶ 24-38. Almost none of the nine defendants had anything to do with the advertisement at issue. *See* Defendants' American Honda Motor Co., Inc. and Honda North America, Inc.'s Rule 12(b)(6) Motion to Dismiss (Doc. 15); Defendants Honda Motor Co., Ltd., et al., Rule 12(b)(2) Motion to Dismiss (Doc. 16). Numerous US-based entities were named in an apparent attempt to make the case appear connected to the United States.

After the originally-named defendants moved to dismiss, Plaintiffs filed a First Amended Complaint (Doc. 25). The amended complaint dropped four U.S.-based defendants: American Honda Motor Co., Inc., Honda North America, Inc., Dentsu America LLC, and Dentsu Holdings USA, Inc. *Id.* It added three foreign entities, Honda Motor Europe Ltd. ("Honda Europe"), Honda of the U.K. Manufacturing Limited ("HUM"), and The Mill (Facility) Limited ("The Mill UK"), plus three unnamed foreign Doe defendants alleged to be located in Ireland, Norway and Italy. *Id.* ¶¶ 6-7, 11, 15, 23. The Amended Complaint continues to allege the same claims of copyright infringement under U.S. and U.K. law, and pendent state law claims. Amend. Comp. ¶¶ 28-41.

II. Issues to Be Ruled on and the Standard of Review.

A. Issues to be ruled upon.

Does this Court have personal jurisdiction over each of the Defendants – six foreign corporate entities and two New York-based entities?

B. Standard of review for determining personal jurisdiction.

When a nonresident defendant challenges *in personam* jurisdiction, the plaintiff bears the burden of demonstrating facts sufficient to support jurisdiction. *Johnston v. Multidata Systems Int'l Corp.*, 523 F.3d 602, 609 (5th Cir. 2008). A plaintiff's complaint must plead jurisdictional facts establishing a prima facie case for personal jurisdiction. *Fielding v. Hubert Burda Media, Inc.*, 415 F.3d 419, 424 (5th Cir. 2005). The court must accept as true the uncontroverted allegations in the complaint, and resolve factual disputes in favor of the plaintiff, but the court is not obliged to credit conclusory allegations, even if uncontroverted. *Panda Brandywine Corp. v. Potomac Elec. Power Co.*, 253 F.3d 865, 868 (5th Cir. 2001). The court may determine jurisdiction by receiving affidavits or other recognized products of discovery. *Alpine View Co. Ltd. v. Atlas Copco AB*, 205 F.3d 208, 215 (5th Cir. 2000).

The Due Process Clause sets the outer boundaries of a court's authority to proceed against a defendant. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, – U.S. –, 131 S. Ct. 2846, 2853 (2011) ("*Goodyear Dunlop*"). Due process permits the exercise of personal jurisdiction over a nonresident defendant only when that party has purposely availed itself of the benefits and protections of the forum state by establishing "minimum contacts" with the state, and when the exercise of jurisdiction over that party would be consistent with traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *Seiferth v. Helicopteros Atuneros, Inc.*, 47 F.3d 266, 271 (5th Cir. 2006).[1]

Minimum contacts with the forum state can be established through events giving rise to either specific or general jurisdiction. *Freudensprung v. Offshore Tech. Serv. Inc.*, 379 F.3d 327, 343 (5th Cir. 2004). The Supreme Court in *Goodyear Dunlop* recently reiterated the standards for specific and general personal jurisdiction.

Specific jurisdiction exists over a corporate defendant "where the corporation's instate activity is 'continuous and systematic' and *that activity gave rise to the episode-in-suit.*" 131 S. Ct. at 2853 (citing *International Shoe*, 326 U.S. at 317) (emphasis in original). In addition, "the commission of certain 'single or occasional acts' in a State may be sufficient to render a corporation answerable in that State *with respect to those acts*, though not with respect to matters unrelated to the forum connections." *Id.* Specific jurisdiction requires a sufficient nexus between the nonresident defendant's contacts with the forum and the cause of action. *Rittenhouse v. Mabry*, 832 F.2d 1380, 1390 (5th Cir. 1987). Contacts are sufficient only if the defendant "purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its law." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). "Purposeful availment" of the forum state exists when "the defendant's conduct and connection with the forum state are such that [the defendant] should reasonably anticipate being haled into court there." *Id.* at 474. The requirement of purposeful

[1] While the Plaintiffs have asserted jurisdiction under Rule 4(k)(2), Fed. R. Civ. P., against foreign defendants, they must still meet the due process requirements of specific or general jurisdiction, either of which are met as shown in this motion. Moreover, Rule 4(k)(2) is limited to federal law, and the allegations for a US copyright claim do not appear to have been met, as none of the named defendants is alleged to have committed any acts of infringement in the US (see paragraph 23 of the amended complaint which fails to allege any copying or other acts of infringement in the US by any of the named defendants).

availment "ensures that a defendant will not be haled into a jurisdiction solely as the result of 'random,' 'fortuitous,' or 'attenuated' contacts, … or of the 'unilateral activity of another party.'" *Id*. at 415.

General jurisdiction exists in those "instances in which the continuous corporate operations in a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Goodyear Dunlop*, 131 S. Ct. at 2853 (quoting *International Shoe*, 326 U.S. at 318). "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, on in which the corporation is fairly regarded as at home." *Id*. at 2853-54. Establishing general jurisdiction requires meeting a "high bar." *Guzman v. Memorial Hermann Hosp. Sys.*, No. H-07-3973, 2008 WL 5273713, *12 (S.D. Tex. Dec. 17, 2008). For instance, the Supreme Court held in *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 446 U.S. 408, 416 (1984), that negotiating a contract in Texas, accepting checks drawn from a Houston bank, purchasing a helicopter fleet in Texas, and sending employees to be trained there was insufficient to establish general jurisdiction.

The jurisdictional analysis must be conducted for each defendant independently. *Sher v. Johnson*, 911 F.2d 1357, 1365 (9th Cir. 1990). "[I]t is only the defendant's contacts with the forum that count," not the "unilateral activity of another party or a third person." *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 785 (Tex. 2005). While "[t]he foreseeable effects of a foreign defendant's alleged tort committed outside the forum state are assessed as part of the defendant's minimum contacts with the forum state," "effects alone are insufficient to confer specific jurisdiction absent purposeful acts by the defendant directed toward the state." *Hooda v. WCA Services Corp.*, Civ. Action No. H-10-5022, 2011 WL 2182354, *4 (S.D. Tex.

June 3, 2011) (citing *Burger King*, 471 U.S. at 462; *Allred v. Moore & Peterson*, 117 F.3d 278, 286 (5th Cir. 1997); *Jobe v. ATR Marketing, Inc.*, 87 F.3d 751, 753-54 (5th Cir. 1999)).

III. Summary of Argument.

The Plaintiffs have sued eight defendants, taking a "sue them all and let the Court sort them out" approach, even though only some of these companies had any involvement in the advertisement and none have specific or general jurisdictional contacts with this forum.

The advertisement at issue was created in the United Kingdom and in Canada by London-based companies for the European launch of the Honda CR-V. The advertisement was broadcast in Europe to promote European Honda sales. It was not broadcast in the United States and was not used to advertise U.S. sales of Honda vehicles.

Nonetheless, the Plaintiffs have sued Honda Europe's Japanese parent company and two New York-based companies, none of which conceived or developed the advertisement at issue. The companies that did work on the advertisement – and those that did not – are not subject to personal jurisdiction in this forum.

Honda Motor Co., Ltd. ("Honda Motor"), is a Japanese parent company that does not operate in the United States and which had no role in the advertisement at issue. Courts in the United States have routinely dismissed Honda Motor as not being subject to jurisdiction here, even regarding claims based on Honda products sold in the U.S., and this case is no different. It should be dismissed.

Dentsu McGarry Bowen LLC is a New York-based advertising company that provided very limited strategic assistance, in London, with regard to the Honda CR-V advertisement, but which directed no activity towards Texas and has no contacts with Texas sufficient to support general jurisdiction. London-based Dentsu McGarry Bowen UK Ltd. developed the advertisement, but all of its work was conducted in London and Canada, and it has no contacts sufficient to subject it to personal jurisdiction in this forum.

The Mill Group, Inc., is a New York-based editing company that was completely uninvolved in the advertisement at issue, and which has no minimum jurisdictional contacts with Texas. The Mill (Facility) Ltd. is a London-based editing company that was hired by McGarry Bowen UK to work on the advertisement, but which did no work in the United States and has no contacts with this forum.

Finally, Rogue Films, Ltd., is a small London-based production company hired by McGarry Bowen to produce the advertisement. It did no work in and has no contacts with this forum, and is not subject to this Court's personal jurisdiction, general or specific.

Because none of the Defendants are subject to personal jurisdiction in this forum, the claims against them should be dismissed.

IV. Argument.

A. The Plaintiff's Claims and the Facts.

In 2012, Honda Motor Europe Ltd. ("Honda Europe") invited Simon North of Defendant Dentsu McGarry Bowen UK Ltd. ("McGarry Bowen UK"), to make a "pitch" to Honda to be hired to produce an advertising campaign to launch the Honda CR-V in Europe. Ex. 6 ¶ 8. For the "pitch," McGarry Bowen UK employees in London developed the concept of a driver driving into a "portal" to another dimension, to convey the experience of owning and driving the new Honda CR-V. *Id.* McGarry Bowen UK pitched its concept to Honda Europe at its offices in London on June 22, 2012; about a week later North was told by Honda Europe that they had won the job. *Id.* Honda Europe and McGarry Bowen UK subsequently negotiated and entered into an agreement that covered the production of the television advertisement for the European CR-V campaign. *Id*.

McGarry Bowen UK then sought the services of a television director to assist in creating the advertisement, ultimately selecting Sam Brown, a UK-based director affiliated with Rogue Films Ltd. ("Rogue Films") Ex. 6 ¶ 9. Rogue Films is a London-based production company. *Id*. McGarry Bowen also retained the services of the London-based editing company The Mill (Facility) Limited ("The Mill UK") to provide editing and digital effects assistance. *Id.*

All creative work developing the advertisement was done in London. Ex. 6 ¶¶ 8-10. The live-action video for the advertisement was filmed in Vancouver, British Columbia, Canada. *Id*. The post-production editing and digital effects was done in London by The Mill UK. *Id*. Defendants did none of the work creating the advertisement in the United States or in Texas. *Id*.[2]

Among many portal-type images that were reviewed and referenced in developing the concept for the Honda television ad was a photograph of Inversion. Ex. 6 ¶ 11. In August 2012, Kate Hitchings, a producer employed by Rogue Films and working with McGarry Bowen UK on the Honda advertisement, contacted Plaintiff Dean Ruck. Ruck told Hitchings by email that the Plaintiffs did not hold a copyright to the "portal" concept, and as long as they did not use "actual images of our Inversion project, full or partial," the Plaintiffs did not object to the concept "of a portal through a wood frame house structural." Ex. 6 ¶ 11, Ex. A. Ruck asked Hitchings to "let us know if you were using actual images of our project in any way, digitally manipulated or otherwise … . Otherwise, I don't think it's an issue. Thanks for asking though." *Id*.

---

[2] Garrison Keillor recorded the voice-over from his home state of Minnesota, but no agent of any Defendant travelled to the United States in connection with that work, and neither Keillor's voice nor his narration are the basis of the Plaintiffs' claims of infringement. Ex. 6 ¶ 12.

Relying on Ruck's representation, McGarry Bowen UK continued to develop the advertisement, constructing at considerable expense a wooden frame house to use for the "portal" concept. Ex. 6 ¶ 12. No actual images of Inversion, digitally manipulated or otherwise, were used in the advertisement; the Vancouver set, the video and the digital effects were all original creations for the Honda brand advertisement. *Id*.

After the Vancouver set had been built and the advertisement near completion, Plaintiff Ruck learned of the set and complained to Hitchings he though it too closely resembled Inversion, even though no actual images of the project were used. Ex. 6 ¶ 13. In fact, Inversion and the "portal" depicted in the advertisement differ substantially. In the advertisement, the portal is seen in the drivers' imagination only; it develops before his eyes as the wooden planks break apart; the inside of the house contributes materials to the portal as they swirl in a vortex; the portal is large enough for a car to drive into, and through, and it leads to another dimension. *Id*.

Despite these differences, and despite the Plaintiffs' assurance that no permission or credit was needed if no actual images of Inversion were used, Hitchings offered to give the Plaintiffs an "inspired by" credit for the commercial. Ex. 6 ¶ 14, Ex. B. The Plaintiffs accepted the credit and drafted the precise language to be used. *Id.* Hitchings volunteered to pay the Plaintiffs a substantial sum as a good will gesture, but neither she nor any Defendant "admitted infringement," as alleged. *Id*. No response to Hitchings' offer was ever made; instead, this lawsuit was filed seven months later. *Id.*

The advertisement was used solely for the European CR-V campaign. Ex. 6 ¶ 15. It was not aired on television in the United States as any part of a Honda brand television advertising campaign, or otherwise. Ex. 1 ¶ 12; Ex. 2 ¶ 6. While the advertisement was placed on the

McGarry Bowen and The Mill websites along with other examples of their work, those websites are passive and non-commercial promotional sites; no business is transacted on or through them. Ex. 6 ¶ 16; Ex. 7 ¶ 8.

B. The Defendants are Not Subject to Personal Jurisdiction in This Forum.

1. The Honda Defendants.

a. Honda Motor.

Defendant Honda Motor Co., Ltd. ("Honda Motor") is a Japanese parent and holding corporation. U.S. courts have repeatedly held that Honda Motor is not subject to personal jurisdiction in the United States. *E.g., Miller v. Honda Motor Co.*, 779 F.2d 769, 771 (1st Cir. 1985) (affirming dismissal of Honda Motor for lack of personal jurisdiction); *In re Automobile Antitrust Cases I and II*, 135 Cal. App.4th 100, 118-19, 37 Cal. Rptr. 258, 274-76 (Cal App. 2005 (affirming dismissal of Honda Motor for lack of personal jurisdiction); *McCarthy v. Honda Motor Co.*, No. 4:97-CV-689-A, 1997 WL 769474, *6-7 (N.D. Tex. Dec. 4, 1997) (dismissing product liability action against Honda Motor for lack of personal jurisdiction). Honda Motor is not subject to general or special jurisdiction in this case, either.

Honda Motor is a Japanese corporation with its principal place of business in Tokyo, Japan. Ex. 1 ¶ 2. It does not own, lease or operate any manufacturing plants, distributorships, facilities, offices or real property of any kind in Texas or the United States. *Id.* ¶¶ 5-6. Honda Motor does not pay taxes in Texas or in the United States; it does not maintain a permanent establishment in Texas or the United States as that term is defined in the US-Japan Income Tax Treaty. *Id.* ¶¶ 6-7. Honda Motor is not qualified, licensed or authorized to do business in Texas; it does not have an agent for registered service of process in Texas; it does not maintain a telephone listing or address in Texas. *Id.* ¶ 8. Honda Motor does not advertise or market Honda vehicles in Texas or the United States. *Id.* ¶ 9.

Honda Motor manufactures in Japan some of the Honda products that are sold under the Honda brand. Ex. 1 ¶ 3. Honda Motor, however, does not sell or lease any of these products in Texas or the United States. *Id.* ¶ 4. Rather, Honda Motor sells products to American Honda Motor Co., Inc. ("American Honda"), a separately-incorporated, separately-managed subsidiary incorporated in California. *Id.* ¶ 8; Motion to Dismiss (Doc. No. 16), Ex. 2 ¶¶ 2-5. The sale of Honda-brand products in the United States, therefore, cannot be the basis for asserting personal jurisdiction over Honda Motor. *E.g.*, *Miller v. Honda Motor Co.*, 779 F.2d at 771; *In re Automobile Antitrust Cases I and II*, 135 Cal. App.4th at 118-19; *McCarthy v. Honda Motor Co.*, 1997 WL 769474, *6-7.

The "portal" advertisement at issue was not produced to advertise vehicles manufactured or sold in the United States. It was developed as part of a campaign to introduce the new Honda CR-V in Europe, and it was commissioned by a separate entity, Honda Europe. Ex. 6 ¶ 8. While the Amended Complaint alleges that Honda Motor was involved in a "conspiracy" with other defendants, that allegation is completely conclusory, with no factual support. Amend. Comp. ¶ 14. As shown below, neither of the other two Honda defendants have jurisdictional contacts with the forum, but even if they did, such contacts cannot be attributed to Honda Motor.[3]

In their Amended Complaint, Plaintiffs desperately seek a basis for general jurisdiction over Honda Motor by alleging that it has sought and obtained registrations with the U.S. Patent and Trademark Office to protect its inventions and trademarks, and with the U.S. Copyright Office to protect its copyrights, none of which involve the Honda advertisement at issue. Amend. Comp. ¶ 5. This is meaningless. Federal courts have consistently rejected the argument that a foreign corporation, merely by seeking to protect its intellectual property, subjects itself to general jurisdiction here. *See, e.g., Gen. Motors Corp. v. Ignacio Lopez de Arriortua*, 948 F. Supp. 656, 666 n.9 (E.D. Mich. 1996) (no personal jurisdiction over Volkswagen based on trademark registration and suits to protect its trademarks in the U.S.); *Williams v. Canon, Inc.*, 432 F. Supp. 376, 380 (C.D. Cal. 1977) (no personal jurisdiction over Japanese parent corporation based on use of its trademarks by its American subsidiary); *In re Chocolate Confectionary Antitrust Litigation*, 602 F. Supp.2d 538, 567 (M.D. Pa. 2009) (prosecution of patents does not "implicate systematic, continuous business dealings in the United States"); *Telcordia Technologies, Inc. v. Alcatel, S.A.*, 2005 WL 1268061, *7-8 (D. Del. 2005) (ownership of patents insufficient to result in a systematic, continuous presence in the United States).[4] Honda Motor is therefore not subject to general jurisdiction in this forum because it has no "systematic and continuous" contacts with the forum.

---

[3] "Generally, a foreign parent corporation is not subject to the jurisdiction of a forum state merely because its subsidiary is present or doing business there; the mere existence of a parent-subsidiary relationship is not sufficient to warrant the assertion of jurisdiction over the foreign parent." *Hargrave v. Fireboard Corp.*, 710 F.2d 1154, 1159 (5th Cir. 1983). "As long as a parent and subsidiary maintain separate and distinct corporate entities, the presence of one in the forum may not be attributed to the other." *Id.* at 1160. Honda Motor maintains these corporate distinctions, and therefore contacts of its U.S. subsidiaries are not attributable to it. *Miller*, 779 F.2d at 772.

---

[4] *See also In re Enter. Rent-A-Car Wage & Hour Employment Practices Litig.*, 735 F. Supp.2d 277, 334 (W.D. Pa. 2010) (no general jurisdiction over parent car-rental company based on registration of trademarks with state of Illinois); *Black v. JP Morgan Chase & Co.*, 2011 WL 4102802, *44 (W.D. Pa. Aug. 10, 2011) (W.D. Pa. Sept. 14, 2011) ("[M]ere ownership of a registered U.S. trademark does not subject a domestic company to personal jurisdiction in every state throughout the United States."). The only way Honda's filings could be relevant to personal jurisdiction would be if the Plaintiffs' claims related to Honda's filings, which they do not. *See Nat'l Patent Dev. Corp. v. T.J. Smith & Nephew Ltd.*, 877 F.2d 1003, 1009-10 (D.C. Cir. 1989) (en banc) (finding jurisdiction over foreign holder of U.S. patent holder in proceedings concerning the U.S.-registered patent); *LG Display Co. Ltd. v. Obayashi Seikou Co., Ltd.*, 919 F. Supp.2d 17, 25-27 & n.7 (D.D.C. 2013) (stating that mere entry into the District of Columbia for the purpose of contacting federal agencies, including to register patents, cannot serve as a basis for in personam jurisdiction).

Honda Motor is likewise not subject to specific jurisdiction in this forum because it had no involvement with the advertisement at issue, let alone "purposely directed" any activity towards this forum with regard to the facts underlying the Plaintiffs' claims. *See, e.g., Helicopteros Nacionales de Columbia, S.A. v. Hall*, 446 U.S. 408, 417-214 (1984) (negotiating a contract in Texas, accepting checks drawn from a Houston bank, purchasing a helicopter fleet in Texas, and sending employees to be trained there was insufficient to establish general jurisdiction); *Hargrave*, 710 F.2d at 1159-60; *Dunn v. Svitzer*, 885 F. Supp. 980, 987 (S.D. Tex. 1995) (parent corporation is not subject to personal jurisdiction based on its subsidiary's contacts with forum).

The Plaintiffs' claims against Honda Motor should therefore be dismissed for lack of personal jurisdiction.

b. Honda Europe.

Defendant Honda Motor Europe, Ltd. ("Honda Europe") is a United Kingdom corporation with its principal place of business in Slough, U.K. Ex. 3 ¶ 2. It coordinates the import and distribution of products bearing the Honda trademark in Europe. *Id.* ¶ 3. It purchases Honda motor vehicles from Honda of the U.K. Manufacturing Limited ("Honda U.K. Manufacturing") and distributes them through a European network of subsidiaries and distributors, which in turn supply the vehicles to independent distributors. *Id.* It does not advertise or market any Honda vehicles or parts in the United States. *Id.* ¶ 8. Although it is a wholly-owned subsidiary of Honda Motor, it functions as a separate corporate entity with its own policies, goals and objectives, separate corporate books, bank accounts, accounting and tax filings. *Id.* ¶ 9.

Honda Europe does not sell or lease Honda products in Texas or elsewhere in the United States; it does not own, lease, operate or maintain offices, real estate or property in the United States; it is not qualified, licensed or authorized to do business in Texas or any state in the United States. Ex. 3 ¶ 5-6. It does not maintain a registered agent, telephone listing or address in the United States. *Id.*

Given these facts, Honda Europe is not subject to general jurisdiction in this forum – it has no "continuous and systematic" contacts with the United States, let alone such contacts that make for the equivalent of a "domicile" in the United States, "in which the corporation is fairly regarded as at home." *Goodyear Dunlop*, 131 S. Ct. at 2853-54.

Nor do the facts related to the Plaintiffs' claims subject Honda Europe to personal jurisdiction in this forum. Honda Europe commissioned an advertising campaign to launch the CR-V in Europe. Ex. 3 ¶ 10; Ex. 6 ¶ 8. It retained a UK-based advertising agency, McGarry Bowen UK, and worked with that company in its London offices. Ex. 6 ¶ 8. The advertising campaign was distributed for viewing in select countries in Europe only, and the television advertisement was made available for streaming on Honda's UK website and select microsites directed at certain countries in Europe only, but Honda Europe did not direct, commission or request that the advertisement be broadcast or distributed in the United States. Ex. 3 ¶¶ 10-13.

Because Honda Europe's CR-V advertising campaign was produced for and distributed in Europe, not the United States, Honda Europe's activities that gave rise to the Plaintiffs' claims were not "purposeful acts by the defendant directed toward" this forum. *Hooda*, 2011 WL 2182354, *4. Even though the Plaintiffs claim to have felt the "effects" of Honda Europe's activities here, neither the Plaintiffs' residence in this forum, nor the fact that they claim to have suffered damages here, are sufficient to support specific jurisdiction. *Revell v. Lidov*, 317 F.3d

467, 473 (5th Cir. 2002) ("[T]he plaintiff's residence in the forum, and suffering of harm there, will not alone support jurisdiction" under the "effects" test); *Panda Brandywine Corp. v. Potomac Elec. Power Co.*, 253 F.3d 865, 869 (5th Cir. 2001) (personal jurisdiction lacking because defendant's alleged tortious conduct had "no relation to Texas other than the fortuity that [the plaintiffs] reside[d] there").

And while it can be assumed that the advertisement's placement on websites made it accessible to persons in the United States, this is likewise insufficient to establish specific jurisdiction in this forum – lest any publication on the World Wide Web automatically subject foreign entities and individuals to the reach of U.S. courts. The placement of the advertisement on non-interactive websites by Honda and other defendants was for promotional purposes only; neither Honda Europe, McGarry Bowen UK or The Mill UK transacted sales over their websites. Ex. 3 ¶¶ 3, 12; Ex. 4 ¶ 8; Ex. 6 ¶ 16. Such websites are not sufficient to establish specific jurisdiction, because they do not reflect a connection with the forum that "has been purposefully established by the defendant." *Pervasive Software Inc. v. Lexware GmbH & Co. KG*, 688 F.3d 214, 221 (5th Cir. 2012).

Even before the Internet, the Fifth Circuit had held that advertising that was published generally, rather than directed toward the forum, was insufficient, holding that "advertising in national publications is not in itself sufficient to subject a defendant to personal jurisdiction," even when the advertisement itself is alleged to be infringing. *Singletary v. B.R.X., Inc.*, 828 F.2d 1135, 1136 (5th Cir. 1987). *See also Seitz v. Envirotech Systems Worldwide Inc.*, 513 F. Supp.2d 855, 864 (S.D. Tex. 2007) ("national advertising that may include circulation in the forum state is generally insufficient to show jurisdiction over a nonresident defendant in that state"). For instance, in *Quick Techs., Inc. v. Sage Group PLC*, 313 F.3d 338, 345 (5th Cir.

2002), a trademark infringement and unfair competition case, the defendant had used an allegedly infringing trademark in "publications which circulate the United States," but the Fifth Circuit held that "[g]enerally, advertisements are insufficient to establish personal jurisdiction," and refused to find specific jurisdiction based on that advertising, even though it contained the allegedly infringing mark. *Id*.

The advent of websites has not changed this rule: websites used for "passive" advertisement do not subject the advertiser to specific jurisdiction in every forum which can access the Internet, unless there is a specific intent to target residents of the forum through interactive features. *See Mink v. AAAA Development LLC*, 190 F.3d 333, 336 (5th Cir. 1999) (applying *Zippo* sliding scale of website interactivity in determining personal jurisdiction). "[M]ere maintenance of websites accessible to Texas residents does not establish the minimum contacts necessary to support in personal jurisdiction." *Dymatize Enterprises v. Reflect Nutrition Ltd.*, 2008 WL 161021, *(N.D. Tex. 2008). To satisfy due process, there must be evidence that the defendant used the website specifically to target or focus on residents in the forum, not simply that residents of the forum could access the site. *See, e.g., Dymatize Enterprises*, 2008 WL 161021, *4; *Martin v. Candle Queen Candles, LLC*, 2012 WL 2952542 (W.D. Ky. 2012) (no personal jurisdiction in copyright action against defendant who posted image on Facebook, because "posting an image on the Internet cannot be interpreted as purposefully directing an intentional tort toward" the forum); *Facebook, Inc. v. Pedersen*, 868 F. Supp.2d 953, 959 (N.D. Cal. 2012) (no personal jurisdiction in trademark claim against foreign defendant, because to "find that a nonresident defendant expressly aimed his conduct at the forum requires 'something more' than 'simply registering someone else's trademark as a domain name and posting a web site on the Internet.'"); *Facebook, Inc. v. Teachbook.com, LLC*, 2011 WL 1672464 (N.D. Cal.

2011) (that an essentially passive Internet advertisement may be accessible in the plaintiff's home state alone is not enough to support personal jurisdiction in a trademark infringement suit); *Hyperbaric Options, LLC v. Oxy-Health, LLC*, 2013 WL 5449959 (E.D. Mich. 2013) (posting of allegedly defamatory material on YouTube and Twitter insufficient to establish that the defendants expressly targeted the forum state).

The advertising campaign at issue *was* targeted, but at Europe, not at Texas or the United States, and therefore neither the campaign nor the defendants' websites can support specific jurisdiction.

c. Honda UK Manufacturing.

Honda of the U.K. Manufacturing Limited ("Honda UK Manufacturing") simply makes vehicles in the United Kingdom and sells them to Honda Europe. Ex. 2 ¶ 3; Ex. 3 ¶ 4. It is a United Kingdom corporation with no operations, property or other business activities in Texas or the United States. Ex. 2 ¶¶ 2-9. It is not involved in the conception, development or purchase of advertising for Honda products, and was not involved the advertisement at issue in this lawsuit. *Id.* ¶¶ 11-12. It did provide, at Honda Europe's request, two vehicles that were apparently used in the filming of the advertisement at issue in Vancouver, but it did not control or direct the conception, production or airing of that advertisement. *Id.* ¶¶ 12-13.

The United States is not, in any way shape or form, the equivalent of Honda UK Manufacturing's "domicile," and it has no "continuous and systematic" contacts with this forum, so it is not subject to general jurisdiction. *Goodyear Dunlop*, 131 S. Ct. at 2853-54. Nor did it purposefully direct any activity towards this forum out of which the Plaintiffs' claims arise, precluding the exercise of specific jurisdiction over it. *Burger King*, 471 U.S. at 462.

2. The McGarry Bowen Defendants.

The Plaintiffs initially sued four separate corporate entities affiliated with the Dentsu Group, a global network of affiliated companies, and treated them interchangeably. The Plaintiffs have now dropped two of those entities, but have still failed to allege facts sufficient to assert personal jurisdiction over either defendants. Neither has the required minimum contacts to be subject to personal jurisdiction in this forum.

a. McGarry Bowen US.

Defendant Dentsu McGarry Bowen LLC ("McGarry Bowen US") is a New York limited liability company with its principal place of business in New York, New York, and an office in Chicago. Ex. 5 ¶ 3-4. It has no real estate, businesses or other assets in Texas; it has no Texas offices, employees, officers or agents; it is not registered to do business in Texas, does not pay taxes in Texas, and does not maintain an agent for service of process in Texas. *Id.* ¶¶ 5-6. McGarry Bowen US therefore does not have the "systematic and continuous" contacts with the State of Texas that would subject it to general jurisdiction in this forum.

McGarry Bowen US is an advertising agency, but it did not conceive, develop, produce or air the television advertisement at issue. Ex. ¶¶ 4, 7. McGarry Bowen US did not conceive or design the "portal" concept for the Honda CR-V advertisement. *Id.* ¶ 8. Two McGarry Bowen US employees provided limited strategic support to McGarry Bowen UK – in London – in the days prior to and at the initial "pitch" to Honda. *Id.* One employee provided assistance with strategic planning, and another helped describe the company's digital capabilities. *Id.* Gordon Bowen was present at the London "pitch" meeting, but none of these three persons were involved in the conception or creation of the Honda advertisement, and none are alleged to have had any contact with the Plaintiffs. *Id.* ¶ 7.

Likewise, McGarry Bowen's limited involvement in the "pitch" meeting for the Honda advertisement took place in London, did not include any contacts with the Plaintiffs, and were "directed at" the United Kingdom, not Texas. Ex. 5 ¶ 5; Ex. 6 ¶ 7. These limited activities, particularly since they took place in the United Kingdom, are insufficient to establish specific jurisdiction in Texas. *E.g.*, *Dunn*, 885 F. Supp. at 984-989 (dismissing for lack of personal jurisdiction claims against foreign parent and subsidiary companies with no substantial contacts with Texas, and dismissing for *forum non coveniens* claim against remaining foreign defendants).[5]

b. McGarry Bowen UK.

Dentsu McGarry Bowen UK, Ltd. ("McGarry Bowen UK") is a London-based advertising agency serving companies that sell products and services in Europe. Ex. 6 ¶ 4. McGarry Bowen UK does not provide advertising services in the United States. *Id.* It is not qualified or registered to do business in the United States; it does not pay taxes here or maintain registered agents for service of process here. *Id.* ¶ 5. It has no employees, officers, agents, real or personal property, assets, vehicles or other tangible or intangible property located in Texas or the United States. *Id.* ¶¶ 5-6. It cannot be subject to general jurisdiction in this forum. *Goodyear Dunlop*, 131 S. Ct. at 2853.

---

[5] McGarry Bowen US did have one Texas client at the time this suit was filed, Dr. Pepper/Snapple, and has shot a couple of advertisements in Texas, activities that have entailed occasional trips by some employees to this state. Ex. 5 ¶¶ 7-8. These contacts are completely unrelated to the Plaintiffs' claims, and therefore cannot form a basis for specific jurisdiction. Nor are they sufficient for general jurisdiction, because "even repeated contacts with forum residents by a foreign defendant may not constitute the requisite substantial, continuous and systematic contacts required for a finding of general jurisdiction." *Johnston v. Multidata Sys. Int'l Corp.*, 523 F.3d 602, 609 (5th Cir. 2008). McGarry Bowen US is headquartered in New York; occasional trips to Texas in no way establish this state as the equivalent of its domicile, "in which the corporation is fairly regarded as at home." *Goodyear Dunlop*, 131 S. Ct. at 2853-54.

Nor can it be subject to specific jurisdiction based on the facts giving rise to the Plaintiffs' claims. McGarry Bowen UK conceived and developed the Honda CR-V advertisement in London. Ex. 6 ¶ 7. *Id.* McGarry Bowen US provided brief strategic support in London for the Honda "pitch" meeting, but nothing more, and nothing in Texas. Ex. 5 ¶ 8. McGarry Bowen UK developed the advertisement for a European company for a European advertising campaign. It did all of its work on the advertisement in the United Kingdom and Canada; none of its work was done in the United States, let alone Texas. Ex. 6 ¶¶ 8-10. McGarry Bowen used a UK director, a UK production company, and a UK editing company. *Id.* Neither McGarry Bowen entity communicated with the Plaintiffs; the few communications with Plaintiff Ruck in the course of the development of the advertisement were made by Kate Hitchings, an employee of London-based Rogue Films. Ex. 6 ¶ 11. These communications could not subject McGarry Bowen UK to jurisdiction in this forum because only the defendant's own contacts with the forum count towards jurisdiction. *Renoir v. Hantman's Associates, Inc.*, No. H-05-4152, 2006 WL 1007481, *6 (S.D. Tex. April 18, 2006).

But even if Rogue Films' contacts with Ruck could be attributed to McGarry Bowen UK, they would be insufficient. Ruck initially assured Hitchings that he had no complaint if an actual image of Inversion was not used, and while Hitchings offered to give the Plaintiffs an "inspired by" credit (which they took, but still sued), the gravamen of the Plaintiffs' claim is that the defendants finished and used the advertisement without their consent. Amend. Comp. ¶ 25. Plaintiffs do not allege that Rogue Film's brief contacts with the Plaintiffs constitute the infringement; indeed, the Plaintiffs' theory is that those contacts did not result in any agreement at all, and that the Defendants pursued development and broadcast of the advertisement despite the Plaintiffs' claims and objections. *Id.* ¶¶ 21-22. Even if the communications are characterized as an attempt to negotiate a license for use of the work, they are insufficient, because they do not reflect a purposeful availing by a defendant of the benefits and protections of the law of the forum. "The law is clear that a contract with an out-of-state party does not in itself establish minimum contacts with that party's home state." *Barney F. Kogen & Co. v. Tred Avon Associates Ltd.*, 393 F. Supp.2d 519, 523 (S.D. Tex. 2005).

Even if a contract had been contemplated, "an exchange of communications between a resident and a nonresident in developing a contract is insufficient in itself to be characterized as purposeful activity invoking the benefits and protections of the forum state's laws." *Stuart v. Spademan*, 772 F.2d 1185, 1193 (5th Cir. 1985). *See also Renoir*, 2006 WL 1007481, *6-7 (negotiating contract with Texas, including one-day visit to Texas to meet with plaintiffs, insufficient to establish personal jurisdiction). The Plaintiffs' claim arises out of the fact that an allegedly infringing advertisement was created in London and Canada, and broadcast in Europe, not the content of the brief communications between Ruck and Hitchings. Specific personal jurisdiction, therefore, cannot be established based on those communications. *Barney F. Kogen & Co.*, 393 F. Supp.2d at 523-24 (foreign defendant's pre-contract communications with plaintiff, although they included representations that defendant was "qualified and capable of performing the work," were insufficiently related to the breach of contract cause of to constitute a "purposeful availment" of the protections of Texas law).

Likewise, to the extent the Plaintiffs allege that the "effects" of the alleged infringement were felt by them in Texas, that is insufficient to support personal jurisdiction over any Defendants in this forum. As this Court has noted, recent case law has made it clear that the "effects test" has narrowed considerably, and the "inquiry is not focused on those effects but rather on the 'actions and reasonable expectations of the defendant.'" *Hooda*, 2011 WL

2182354, *4. McGarry Bowen UK was engaged in work entirely in the UK and Canada, for the European market. It did not seek to do business here, the advertisement was not going to be aired here, and the product being advertised was being sold in Europe, not here. McGarry Bowen UK took no steps to avail itself of the protections of this forum's law, and therefore is not subject to personal jurisdiction in this forum.

3. The Mill Defendants

a. The Mill US.

As with the Honda and U.S.-based Dentsu entities, the Plaintiffs sued the wrong party when they named The Mill Group, Inc. ("The Mill US").

The Mill US is a New York corporation with its principal place of business in New York, offices in Chicago and Los Angeles, but not Texas. Ex. 7 ¶¶ 3-4. As part of its business, The Mill US provides moving image, design and digital effects services to the advertising industry, but it did not provide any such services in connection with the advertisement at issue. Ex. 7 ¶ 4-5. A separately-incorporated, separately-owned and separately-managed company based in London, The Mill (Facility) Limited ("The Mill UK") was hired by McGarry Bowen UK to provide services for the advertisement at issue. Ex. 7 ¶¶ 6-8; Ex. 6 ¶ 9. The Mill US simply had no involvement with the Honda CR-V advertisement that the Plaintiffs complain about. *Id.*

Because The Mill US did not work on the advertisement at issue, let alone purposely direct any activities towards the forum state regarding the ad, it cannot be subject to specific jurisdiction in Texas. *E.g.*, *Helicopteros*, 446 U.S. at 417-214.

Nor does The Mill US have the necessary "systematic and continuous" contacts with Texas sufficient for general jurisdiction.

The Mill US is not licensed or registered to do business in Texas; it does not pay taxes in Texas nor maintain a registered agent for service in Texas. Ex. 7 ¶ 9. It has no offices, real estate or property in Texas. *Id.* ¶ 10. Since 2011, The Mill US has provided services to only eight companies that are located or have offices in Texas, out of hundreds of projects the company has performed nationwide. *Id.* None of those projects involved the advertisement at issue, and for each of those projects, The Mill US performed its work at its offices in New York, Chicago and/or Los Angeles, not Texas. *Id.* The Mill US currently has only one project in process for a company located in Texas, and that work is being performed in Los Angeles, not Texas. *Id.* These random, occasional and unrelated contacts are not sufficient to subject The Mill US to personal jurisdiction in this forum. *See, e.g.*, *Helicopteros*, 446 U.S. at 416; *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 373-76 (5th Cir. 1987) (sale of over $250 million of products to seventeen Texas customers over a five-year period did not constitute systematic and continuous contacts with Texas); *Guzman*, 2008 WL 5273713, *12-13 (forming five limited partnerships in Texas, registering them to do business in Texas, providing administrative services to them in Texas, maintaining a full-time employee in Texas, shipping computer systems to Texas and sending employees to Texas to train users on system, among other things, not sufficient to establish general jurisdiction).

b. The Mill UK.

The Plaintiffs have now sued the company that actually did editing and digital effects work on the advertisement, The Mill (Facility) Limited, but it is a United Kingdom corporation with no employees, operations, properties or other contacts with the United States on which general jurisdiction could be based. Ex. 4 ¶¶ 4-5, 9-11. Nor can it be subject to personal jurisdiction in this forum because it had no contacts with the Plaintiffs whatsoever and none of the work it did on the advertisement took place in the United States or Texas, *id.* ¶¶ 6-7, and although it posted the Honda ad on its website for general advertisement purposes, *id.* ¶ 8, this was not directed at the forum because The Mill UK's work is not conducted in the United States –the vast majority of its work is for companies located in the U.K. and Europe. *Id.* 11.

4. Rogue Films.

Finally, like McGarry Bowen UK and The Mill UK, Rogue Films was involved in producing the advertisement at issue, but solely in London and Vancouver. Ex. 9 ¶¶ 8-11. As noted above, Kate Hitchens' brief phone and email communications with one of the Plaintiffs is insufficient to establish specific jurisdiction over McGarry Bowen UK or Rogue Films. *Stuart*, 772 F.2d at 1193; *Barney F. Kogen & Co.*, 393 F. Supp.2d at 523. And this small London production company has no "continuous and systematic" contacts with the United States or Texas that could possibly support general jurisdiction over it in this forum. Ex. 9 ¶¶ 4-7, 14. *Goodyear Dunlop*, 131 S. Ct. at 5853-54.

V. Conclusion.

For these reasons, the Defendants ask that this Court dismiss all claims against them for lack of personal jurisdiction, and such other and further relief to which they may be justly entitled.

Respectfully submitted,

By:/s/ Peter D. Kennedy

Peter D. Kennedy
Attorney-in-Charge
State Bar No. 11296650
Southern District of Texas Bar No. 17987
GRAVES, DOUGHERTY, HEARON & MOODY, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701
(512) 480-5764
(512) 536-9908 (Fax)
pkennedy@gdhm.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Arthur S. Feldman
THE FELDMAN LAW FIRM, P.C.
55 Waugh Drive, Suite 800
Houston, Texas 77002

James D. Petruzzi
MASON & PETRUZZI
4900 Woodway Drive, Suite 745
Houston, Texas 77056

/s/ Peter D. Kennedy
Peter D. Kennedy

EXHIBITS IN SUPPORT OF DEFENDANTS' RULE 12(b)(2) MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

1. Declaration of Yuichiro Kawamura.
2. Declaration of Ian Howells.
3. Declaration of Martin Moll.
4. Declaration of Ben Stallard.
5. Declaration of Kristin Moore.
6. Declaration of Simon North.
7. Declaration of Damien Macaulay.
8. Declaration of Giles Crown.
9. Declaration of Charles Crompton.